



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,777	07/13/2001	James Chen	25886-0057	5768

24961 7590 06/01/2004

HELLER EHRMAN WHITE & MCAULIFFE LLP
4350 LA JOLLA VILLAGE DRIVE
7TH FLOOR
SAN DIEGO, CA 92122-1246

EXAMINER

KWON, BRIAN YONG S

ART UNIT PAPER NUMBER

1614

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to a process of destroying or impairing target cells.
 - II. Claims 22-24, drawn to an apparatus for transcutaneous photodynamic therapy of a lesion.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, for example a process of modulating immune-response (US 6008241); a process of measuring optical information (US 5477051); and a dental and industrial photocuring process (US 5634711).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

2. If applicant elects Group I invention, it is subject to further restriction as followings.
 - I(a). Claims 1, 3-14, 17-21, drawn to a process of destroying or impairing target cells, comprising administering to a subject a photosensitizing agent.
 - I(b). Claims 2-21, drawn to a process of destroying or impairing target cells, comprising administering to a subject a first conjugate comprising a first member of a ligand-receptor binding pair conjugated to an antibody or antibody fragment,

Art Unit: 1614

and a second conjugate comprising a second member of the ligand-receptor binding pair conjugated to a photosensitizing agent or photosensitizing agent delivery system or prodrug.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, they have different modes of operation. One practicing the invention of any of the above groups would not necessarily be required to practice any of the others. Further a reference which anticipates the invention of one of the above groups would neither anticipate or make obvious any of the other inventions. The search for above inventions would not be co-extensive, particularly as to the literature search required. Clearly each of the above inventions is capable of supporting its own patent.

Because these inventions are distinct for the reasons given above and the search required for Group I(a) is not required for Group I(b), restriction for examination purposes as indicated is proper.

3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (571) 272-0581. The examiner can normally be reached Tuesday through Friday from 9:00 am to 7:00pm.

Art Unit: 1614

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (571) 273-0584. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Brian Kwon
Patent Examiner
AU 1614

A handwritten signature in black ink, appearing to read "Brian", followed by a long horizontal line extending to the right.